

EXHIBIT 1

In The Matter Of:

MICROSOFT CORPORATION

v.

MOTOROLA INC., et al.

MAXIMILIAN HAEDICKE - Vol. 1

June 14, 2013

MERRILL CORPORATION

Legalink, Inc.

135 Main Street
4th Floor
San Francisco, CA 94105
Phone: 415.357.4300
Fax: 415.357.4301

1 you expect that they would enter into a license and 09:21:50
2 dismiss the case? 09:21:52

3 A Depends if they also agree on the other issues 09:21:53
4 which are involved in License Agreement. The license 09:21:57
5 fee is one of the important aspects, but there are other 09:22:01
6 aspects which also have to be covered, and they will 09:22:07
7 only have a full-fledged and valid contract if they 09:22:10
8 agreed on all essential elements of the contract, and 09:22:13
9 only then will they dismiss the case, or would they 09:22:16
10 make -- would they render the case moot. 09:22:20

11 Q Let's suppose that the parties do not agree on 09:22:22
12 a license fee. 09:22:25

13 Does the Orange Book decision say that the 09:22:26
14 defendant must use the second alternative option of 09:22:30
15 letting the patent holder set the royalty? 09:22:34

16 A Please repeat the question. 09:22:35

17 Q If the parties do not agree on a license fee -- 09:22:37

18 A Yes. 09:22:40

19 Q -- does the Orange Book decision say that the 09:22:40
20 defendant must use the second option of allowing the 09:22:43
21 patent holder to set the royalty? 09:22:47

22 A They have the option. They do not -- they 09:22:48
23 must -- they have the option to do it. 09:22:53

24 Q Let's talk about a proceeding in which the 09:22:55
25 court -- a court exams the royalty that has been set by 09:22:58

1 a patent holder through the alternative procedure. 09:23:03

2 What evidence is considered in a proceeding 09:23:05

3 like that? 09:23:07

4 MS. BERRY: Objection -- 09:23:09

5 THE WITNESS: This is -- 09:23:09

6 MS. BERRY: -- lack of foundation. 09:23:11

7 THE WITNESS: -- this is speculative because 09:23:11

8 I'm not aware of any rate setting procedures which have 09:23:16

9 been brought to my attention. I have not taken part in 09:23:19

10 any of those, so, of course, I cannot know the details, 09:23:23

11 and I can only speculate, but my speculation would be 09:23:26

12 that the parties will determine the rate according to 09:23:30

13 the -- the standards which are used also when it comes 09:23:35

14 to the determination of license fees; for example, when 09:23:39

15 it's about damages or in cases like this. So I would 09:23:42

16 assume that similar standards would be applied. 09:23:46

17 BY MR. LOVE: 09:23:50

18 Q And I think we discussed this earlier, so 09:23:52

19 correct me if I'm wrong, but the standard used to 09:23:54

20 evaluate the rate in that proceeding would be whether 09:23:56

21 the rate was within the limits set by antitrust law; is 09:23:59

22 that correct? 09:24:03

23 A Yes. 09:24:03

24 Q What happens if the rate set by the patent 09:24:03

25 holder does not meet that standard? 09:24:08

1	A	In 315 procedure?	09:24:09
2	Q	Yes.	09:24:14
3	A	What happens if --	09:24:14
4	Q	What happens if the court determines that the	09:24:16
5		rate set by the patent holder is not within the limits	09:24:19
6		of antitrust law; what will the court do?	09:24:22
7	A	Then a -- a lower rate will be set, which is	09:24:25
8		still in the limits. The court will control the offer	09:24:30
9		which has been given by the patent holder, if there is	09:24:36
10		such an offer, and will determine whether this is within	09:24:42
11		the boundaries of antitrust law, and if not, the rate	09:24:45
12		will be set according to antitrust law and the other	09:24:49
13		important laws which come into play.	09:24:55
14	Q	Does the license seeker have to pay the rate	09:24:58
15		that was set by the patent holder until the court rules?	09:25:01
16	A	Payment means transfer of funds to the -- to	09:25:03
17		the licensor? No. He has to escrow money, as much --	09:25:10
18		as much money as he deems appropriate. If he wants to	09:25:15
19		be on the absolutely safe side, he may depose estimate	09:25:21
20		escrow as much money as the patent holder has demanded,	09:25:26
21		but as I said before, of course, if he thinks this is	09:25:30
22		too much, he has the option to go below the rate	09:25:34
23		demand by the patent holder and let this rate be	09:25:41
24		reviewed, and, of course -- yeah, so.	09:25:44
25	Q	Do you know how long a proceeding -- a court	09:25:47

1 proceeding under Section 315 to evaluate a patent 09:25:52

2 holder's royalty rate takes? 09:25:55

3 A This is pure speculation because I'm not -- I'm 09:25:56

4 not -- these have not taken place, as far as my 09:26:00

5 knowledge is concerned. I could only guess. 09:26:02

6 Q So have there been any reported German 09:26:04

7 decisions that you are aware of that hold that the rate 09:26:07

8 set by a patent holder under the alternative Orange Book 09:26:10

9 process is acceptable? 09:26:13

10 A As there are no reported 315 procedures, I'm 09:26:14

11 not aware of that -- 09:26:18

12 (Telephonic interruption.) 09:26:18

13 MR. LOVE: I'll -- I'll ask again just so we 09:26:27

14 have a clear question and answer. 09:26:29

15 Q As far as you are aware, there are no reported 09:26:30

16 German decisions showing this second alternative Orange 09:26:32

17 Book procedure? 09:26:36

18 A The rate setting, the second -- the rate 09:26:36

19 setting -- 09:26:38

20 Q Yes. 09:26:40

21 A -- lawsuit? No, the rate has not been 09:26:40

22 reported. 09:26:44

23 Q So we believe -- you believe that the standard 09:26:44

24 that a court would apply in that proceeding is 09:26:47

25 whether -- is -- is to set a royalty within the limits 09:26:50

1 of antitrust law; correct? 09:26:52

2 A Yes. 09:26:54

3 Q But we don't know for sure because there are no 09:26:55
4 decisions? 09:26:58

5 MS. BERRY: Objection; form. 09:26:59

6 THE WITNESS: Purely speculating. I wouldn't 09:27:01
7 see any other standards which might be reasonable. I 09:27:05
8 wouldn't see any of those standards could come into 09:27:07
9 play, so it's not a -- yeah, I do not only believe it, 09:27:11
10 there are strong arguments for that. 09:27:14

11 BY MR. LOVE: 09:27:15

12 Q Suppose that a patent holder rejected an Orange 09:27:16
13 Book offer that a license seeker had made and that 09:27:20
14 later -- 09:27:24

15 A Who was? 09:27:25

16 Q Sure. Let me start again. 09:27:26

17 So we are talking about the first Orange Book, 09:27:27
18 not the alternative procedure, but the straightforward 09:27:31
19 Orange Book offer. 09:27:33

20 A Yes. 09:27:34

21 Q So suppose a patent holder rejects an Orange 09:27:34
22 Book offer and then a German court finds that the 09:27:38
23 royalty offer was so high that that rejection was an 09:27:41
24 abuse of antitrust law. 09:27:43

25 A Yes. 09:27:43

1 BY MR. LOVE: 09:51:26

2 Q Which is higher, an offer for which the 09:51:27
3 rejection would be a violation of antitrust law or an 09:51:30
4 offer for which the rejection would be an obvious 09:51:34
5 violation of antitrust law? 09:51:37

6 MS. BERRY: Objection; form. 09:51:38

7 THE WITNESS: I would say it's the same. It's 09:51:39
8 just a question of the standard of how you evaluate the 09:51:44
9 facts. Obvious in the sense of you apply a standard of 09:51:47
10 review which does not go into all details. 09:51:54

11 BY MR. LOVE: 09:51:58

12 Q Would you agree that the standard for 09:51:59
13 evaluating an offer under the Orange Book procedure is 09:52:01
14 uncertain in German law? 09:52:04

15 A I wouldn't agree. There's a very clear-cut 09:52:05
16 procedure which has been developed by the German Federal 09:52:09
17 Supreme Court and has been further clarified by the 09:52:14
18 lower courts. 09:52:16

19 Q We were discussing the second alternative 09:52:16
20 procedure -- 09:52:19

21 A Yes. 09:52:19

22 Q -- and you said there are no reported decisions 09:52:19
23 explaining how the second alternative procedure works; 09:52:22
24 correct? 09:52:26

25 A I said there's none been reported, apart from 09:52:26

MAXIMILIAN HAEDICKE - 6/14/2013

Page 46

1 the one which I mentioned where -- where -- which it has 09:52:30
2 worked and where we have -- where the -- the 315 way has 09:52:35
3 been successfully taken, the one which I already mention 09:52:38
4 in my report, of course, but, yeah. 09:52:41

5 Q Which proceeding is that? 09:52:44

6 A This is the -- 09:52:47

7 MS. BERRY: Objection; form. 09:52:51

8 THE WITNESS: This is a proceeding -- can I -- 09:52:51
9 can I look at my report? I can give you the numbers? 09:52:54

10 MR. LOVE: Maybe I'll ask you that later. 09:52:57

11 Q Would you agree that the Germany district 09:52:59
12 courts have introduced additional constraints into the 09:53:01
13 Orange Book procedure that require additional 09:53:04
14 concessions from defendants? 09:53:06

15 MS. BERRY: Objection; form. 09:53:09

16 THE WITNESS: They have clarified the road. 09:53:09

17 BY MR. LOVE: 09:53:15

18 Q Have any of those clarifications been favorable 09:53:15
19 to the license seeker? 09:53:18

20 A No. No. No. 09:53:19

21 Q Can an accused infringer contest infringement 09:53:25
22 while making an Orange Book offer? 09:53:29

23 A Not -- you could do it before, but you cannot 09:53:31
24 do it while he makes this offer, yes. 09:53:38

25 Q Is it favorable for the patent holder to 09:53:40

MAXIMILIAN HAEDICKE - 6/14/2013

Page 47

1 require the license seeker to drop its non-infringement 09:53:42
2 defenses? 09:53:46

3 MS. BERRY: Objection; form. 09:53:46

4 THE WITNESS: Is it favorable to? 09:53:46

5 BY MR. LOVE: 09:53:48

6 Q Is it favorable to the patent holder to require 09:53:48
7 the license seeker to drop all of its non-infringement 09:53:51
8 defenses? 09:53:54

9 A It's favorable. It's perfectly legitimate for 09:53:57
10 the holder of exclusive right to only license or to only 09:53:59
11 negotiate with people who don't want to attack his 09:54:04
12 right, but it's certainly favorable, yes. 09:54:07

13 Q Here in Seattle, in this case, Judge Robart 09:54:10
14 found that the RAND royalty for Motorola's worldwide 09:54:20
15 H.264 portfolio with respect to Microsoft's products was 09:54:24
16 0.555 cents per unit. 09:54:28

17 Were you aware of that? 09:54:30

18 A No. 09:54:31

19 Q Do you have any basis to disagree with that 09:54:31
20 finding? 09:54:34

21 A I have no facts whatsoever either to disagree 09:54:35
22 or to agree. I have no opinion on that. 09:54:37

23 Q Since you weren't aware of it, I'll assume the 09:54:40
24 answer is no, but I'm going to ask anyway. 09:54:48

25 Do you understand that Judge Robart found that 09:54:51

MAXIMILIAN HAEDICKE - 6/14/2013

Page 53

1	eurocent?	10:00:29
2	MS. BERRY: Objection; form.	10:00:29
3	THE WITNESS: I'm not -- I'm not -- I have no	10:00:30
4	opinion on that as I don't know the details.	10:00:33
5	BY MR. LOVE:	10:00:35
6	Q Microsoft's Orange Book offer that was rejected	10:00:36
7	was 2 eurocents, so if Microsoft had offered half a	10:00:38
8	eurocent, would it have been able to avoid an	10:00:43
9	injunction?	10:00:45
10	A If it's less than what has been given here,	10:00:45
11	it's rather unlikely.	10:00:49
12	Q Rather unlikely, or no?	10:00:50
13	A If it's lower than what has been -- well, the	10:00:52
14	court said -- the Mannheim Court said what has been	10:00:56
15	offered is so low that the rejection is not -- is not a	10:00:59
16	breach of antitrust law as it is conceivable that the	10:01:06
17	rate has to be higher.	10:01:12
18	So if the rate would have been lower, it is --	10:01:15
19	I cannot second-guess what the court would have said,	10:01:20
20	but it's -- it's pure logic that if it's lower, I assume	10:01:23
21	that also the same standard would have been applied, and	10:01:25
22	the same standard would have taught that the rejection	10:01:28
23	of such an offer is a violation of European antitrust	10:01:32
24	law.	10:01:36
25	Q If Microsoft had escrowed a sufficient amount	10:01:36

MAXIMILIAN HAEDICKE - 6/14/2013

Page 54

1 of money and had allowed Motorola or the German Court to 10:01:39
2 decide about an equitable license fee, would Microsoft 10:01:43
3 have been enjoined? 10:01:47

4 A If it had followed the second procedure, the 10:01:48
5 315 procedure, it would have not been enjoined. 10:01:53

6 Q How much money would have been sufficient for 10:01:55
7 Microsoft to avoid an injunction? 10:01:57

8 MS. BERRY: Objection; form. 10:02:00

9 THE WITNESS: As this is a difficult 10:02:00
10 evaluation, taking into account all specifics of the 10:02:03
11 case, I'm not able to give you any -- any numbers there. 10:02:06

12 MR. LOVE: We have been going for about an 10:02:10
13 hour. Why don't we take a break. 10:02:11

14 THE VIDEOGRAPHER: Off the record at 10:01. 10:02:13

15 (Recess taken.) 10:02:14

16 THE VIDEOGRAPHER: Back on the record at 10:20. 10:21:01

17 BY MR. LOVE: 10:21:03

18 Q Before we took a break, I had asked you a 10:21:04
19 question earlier about if the parties in a German patent 10:21:05
20 infringement suit agree on a license fee, and I was 10:21:09
21 asking you what they would do, and I don't want to 10:21:11
22 restate your testimony, but part of your response, as I 10:21:15
23 understood it, was, there are other terms besides a 10:21:17
24 license fee that the parties would need to agree on. 10:21:23

25 Do you remember this question? 10:21:26

MAXIMILIAN HAEDICKE - 6/14/2013

Page 56

1 be license fee, the license product, a rendering of 10:22:53
2 account, if the -- the -- the patent as been made use of 10:22:57
3 before, so these are the elements which have been -- 10:23:04
4 have been decided about by the court. If further issues 10:23:08
5 have to be included in such a License Agreement or not 10:23:12
6 is pure speculation, I have no opinion on that. 10:23:18

7 Q Okay. Let's go back to what happened in 10:23:20
8 Mannheim. 10:23:34

9 If Microsoft had followed the second 10:23:34
10 alternative of the Orange Book procedure, Motorola would 10:23:34
11 have set a higher royalty than the 1 to 2 eurocents that 10:23:35
12 Microsoft had offered; correct? 10:23:38

13 MS. BERRY: Objection; form. 10:23:41

14 THE WITNESS: I have no opinion on that. 10:23:41

15 BY MR. LOVE: 10:23:43

16 Q Why would Motorola have set a lower royalty? 10:23:43

17 A I am not aware of -- the business evaluations, 10:23:45
18 which are behind such an offer, are not -- have not come 10:23:50
19 to my attention. I -- I can only speculate, but, of 10:23:54
20 course, we can assume that. 10:23:58

21 Q If Microsoft had challenged the rate set by 10:24:00
22 Motorola by bringing a separate proceeding later and the 10:24:03
23 court set the royalty, the royalty set by the court 10:24:07
24 would also be higher than a -- than the 1 to 2 eurocents 10:24:10
25 that Microsoft had offered; correct? 10:24:15

MAXIMILIAN HAEDICKE - 6/14/2013

Page 57

1 MS. BERRY: Objection; form. 10:24:16

2 THE WITNESS: This is -- this is speculation 10:24:17

3 because you apply a different standard of -- there of 10:24:21

4 assessing the -- the license fee, and as you hear 10:24:26

5 evidence and as further circumstances will be looked 10:24:32

6 upon and be considered by the court, it -- it's just a 10:24:38

7 different way of assessing. It can be that it's higher. 10:24:43

8 It can even be -- if the evidence is such that points in 10:24:46

9 this direction might even be lower. It's just a new 10:24:53

10 story then, and it will be assessed independently, and 10:24:56

11 the court will -- will find what is the adequate and -- 10:24:59

12 and FRAND and entered as conformed license fee. It can 10:25:04

13 be higher. It could even be lower. It can be the same. 10:25:07

14 I -- I cannot say. This is speculation. But, again, 10:25:11

15 the -- the standards, which are used to determine the 10:25:15

16 license fee, they are the relevant thing, and they take 10:25:17

17 into account the standards. This might lead to one -- 10:25:22

18 to one result or to the other. 10:25:25

19 BY MR. LOVE: 10:25:27

20 Q When we talked earlier about the second 10:25:31

21 alternative, I thought I understood your position to be 10:25:34

22 that the same standard would be used to evaluate and 10:25:38

23 determine a correct license fee. It's a license fee 10:25:43

24 that is not objectionable -- 10:25:46

25 A Yes. 10:25:46

MAXIMILIAN HAEDICKE - 6/14/2013

Page 58

1 Q -- under antitrust laws. 10:25:47

2 A Yes. 10:25:49

3 Q So if the court is setting a royalty, it's 10:25:49
4 going to set a royalty that is not objectionable under 10:25:52
5 antitrust law; correct? 10:25:56

6 A Yes. 10:25:57

7 Q The Mannheim Court said that Motorola's 10:25:57
8 rejection of the 1-to-2-eurocent offer was not 10:26:04
9 objectionable under antitrust law; right? 10:26:08

10 A Can you repeat, please. 10:26:12

11 Q Sure. 10:26:13

12 Microsoft offered 1 to 2 eurocents. Motorola 10:26:14
13 rejected it, and the Mannheim Court said that rejection 10:26:19
14 did not violate antitrust law. 10:26:23

15 A Yes, that's correct. 10:26:24

16 Q But you said just now that in a later 10:26:25
17 proceeding, if a court is setting the rate, it might set 10:26:28
18 a rate lower than what Microsoft offered. 10:26:32

19 A It's -- it's speculation, and it also is a 10:26:37
20 question of the German law of civil procedure and 10:26:39
21 evidence. You know, in the -- in the first proceeding 10:26:44
22 the courts will also assess what has been written in the 10:26:46
23 briefs without taking evidence, and so they will make 10:26:49
24 their -- they will form their opinion on what has been 10:26:52
25 written and submitted by the parties. 10:26:55

MAXIMILIAN HAEDICKE - 6/14/2013

Page 59

1 In a second -- the second case of the rate 10:26:58
2 setting procedure, all evidence, all economic 10:27:02
3 specialists may or may not be presented to the court, 10:27:07
4 and the court will just have a very different basis to 10:27:12
5 found its -- its -- for founding its opinion -- for 10:27:16
6 forming its opinion, and it's -- it is possible that 10:27:20
7 it's higher. It is maybe, well, possible, but it's 10:27:25
8 speculation, but as there is another -- different 10:27:28
9 standard of how the facts are evaluated, it may even be 10:27:32
10 lower, but, again, this is pure speculation. 10:27:35

11 The only thing I want to say, this is a 10:27:38
12 completely new story where all facts are assessed newly, 10:27:41
13 and then the court will -- will find it -- will have its 10:27:46
14 decision -- will render its decision on the basis of the 10:27:50
15 facts which it has evaluated according to the law of 10:27:55
16 civil procedure in this second proceeding. 10:27:58

17 Q So the court, in the second proceeding, would 10:28:01
18 apply the same standard, but it might reach a different 10:28:04
19 result because it considers more evidence; is that 10:28:07
20 correct? 10:28:11

21 A It's just a different standard of review, a 10:28:11
22 different standard of review of the first -- the review 10:28:13
23 you have in your first -- in the first -- in the first 10:28:16
24 road, that it's the -- the question whether or not it is 10:28:21
25 obvious. So the idea is you have a -- you look into the 10:28:26

1 briefs, you evaluate what the parties have said, and you 10:28:30
2 form your opinion by not going into -- especially by not 10:28:33
3 taking evidence, so this is maybe specific to German 10:28:39
4 law. 10:28:42

5 In the second proceeding, the proceeding will 10:28:42
6 be a full-fledged proceeding, and the full-fledged 10:28:45
7 proceeding will be more facts; more evidence will be 10:28:49
8 assessed. For example, if you take a preliminary 10:28:51
9 injunction, you also have a different standard of -- of 10:28:54
10 evidence, which is lower than in -- in a full 10:28:59
11 proceeding. And so it's just a different way of 10:29:04
12 assessing facts and -- and hearing evidence or not 10:29:06
13 hearing evidence. 10:29:12

14 Q So I want to make sure I understand your 10:29:13
15 position on what would have happened under the Orange 10:29:19
16 Book. So this will be sort of a long question. I'll 10:29:21
17 ask you a couple things, and just stop me if anything 10:29:24
18 doesn't make sense. 10:29:27

19 Under the Orange Book procedure, as I 10:29:27
20 understand it, there are three paths for Microsoft to 10:29:29
21 avoid an injunction by agreeing to pay a royalty. 10:29:32

22 First, Microsoft could have made an Orange Book 10:29:36
23 offer that Motorola accepted; correct? 10:29:38

24 Second, Microsoft could have let Motorola set a 10:29:42
25 royalty; correct? 10:29:44

MAXIMILIAN HAEDICKE - 6/14/2013

Page 61

1 A Yes. 10:29:47

2 Q And last, Microsoft could have challenged the 10:29:47
3 rate that was set by Motorola, in which case a court, in 10:29:51
4 a separate proceeding, may set a different royalty; 10:29:53
5 correct? 10:29:57

6 A Can you repeat the question? 10:29:57

7 Q Sure. 10:30:00

8 So the -- the third path -- 10:30:01

9 A Yes. 10:30:01

10 Q -- would be Motorola sets a royalty. Microsoft 10:30:03
11 challenges the royalty in a separate proceeding, and as 10:30:06
12 part of that proceeding, the court finds that Motorola's 10:30:09
13 royalty is -- is too high and sets a -- sets the royalty 10:30:12
14 itself. 10:30:17

15 A That's correct. 10:30:18

16 MS. BERRY: Objection to form. 10:30:19

17 BY MR. LOVE: 10:30:20

18 Q For the first option, if Microsoft made an 10:30:21
19 Orange Book offer, you don't know what Mo- -- what offer 10:30:22
20 Motorola would have accepted; correct? 10:30:27

21 A Pure speculation. 10:30:28

22 Q For the second option, you don't know what 10:30:29
23 royalty Motorola would have set, do you? 10:30:32

24 A Of course not, no. 10:30:35

25 Q And on the third option, you don't know what 10:30:37

MAXIMILIAN HAEDICKE - 6/14/2013

Page 62

1 royalty a court would set? 10:30:40

2 A I can only say what the basis for a court 10:30:44
3 decision would be. But as I don't know all the relevant 10:30:47
4 facts and as I didn't hear all the evidence, which would 10:30:50
5 come into play, of course I cannot give a -- give you a 10:30:52
6 number, certainly not. 10:30:56

7 Q So in November of 2012, there was a trial, as 10:30:57
8 part of this case, to determine a RAND royalty for 10:31:01
9 Motorola's patents. 10:31:04

10 Are you aware of that? 10:31:06

11 A No. 10:31:06

12 MS. BERRY: Objection; form. 10:31:07

13 BY MR. LOVE: 10:31:07

14 Q So I'll represent to you that at that trial, 10:31:10
15 there was expert testimony from technical experts and 10:31:15
16 economic experts about the appropriate RAND royalty, but 10:31:18
17 you haven't reviewed the transcript of that trial; 10:31:22
18 correct? 10:31:25

19 A No, I haven't reviewed it. 10:31:25

20 Q So you don't know whether the evidence 10:31:26
21 presented in the November 2000 trial -- 2012 trial in 10:31:29
22 this case was in any way comparable to the evidence that 10:31:31
23 would be considered by a German court that was setting a 10:31:35
24 royalty? 10:31:39

25 A I have no opinion on that. 10:31:39

MAXIMILIAN HAEDICKE - 6/14/2013

Page 96

1	MS. BERRY: Counsel, it's been about an hour,	11:14:06
2	when you have a good time for a break.	11:14:08
3	MR. LOVE: Sure, we can take a break.	11:14:10
4	THE VIDEOGRAPHER: This concludes Video 2,	11:14:12
5	Volume 1 in the deposition of Maximilian Haedicke.	11:14:14
6	Going off the record, the time is 11:14.	11:14:19
7	(Recess taken.)	11:15:50
8	THE VIDEOGRAPHER: This begins Video 2,	11:37:31
9	Volume 1 in the deposition of Maximilian Haedicke.	11:37:32
10	Going back on the record, it's 11:37.	11:37:35
11	BY MR. LOVE:	11:37:37
12	Q You are a judge in the patent division of the	11:37:41
13	Dusseldorf Court of Appeals; is that correct?	11:37:43
14	A Yes.	11:37:45
15	Q What is the relationship between that court and	11:37:45
16	the Regional Court of Dusseldorf?	11:37:48
17	A It's the Court of Appeal for the Regional	11:37:51
18	Court.	11:37:54
19	Q Okay.	11:37:54
20	(Exhibit 6 was marked for identification by the	11:37:57
21	Court Reporter.)	11:37:57
22	MR. LOVE: I've marked, as Exhibit 6, a	11:37:58
23	translation of a March 21st, 2013 decision for the	11:37:59
24	Regional Court of Dusseldorf.	11:38:09
25	Q Are you familiar with this decision?	11:38:11

MAXIMILIAN HAEDICKE - 6/14/2013

Page 97

1 A Yes. 11:38:13

2 Q Have you read it before? 11:38:13

3 A Yes. 11:38:15

4 Q On the first few pages, there are some 11:38:15

5 questions that are numbered 1 through 5. 11:38:19

6 A Yes. 11:38:22

7 Q These are questions that the Dusseldorf court 11:38:22

8 is submitting to the European Court of Justice; is that 11:38:25

9 correct? 11:38:28

10 A Yes. 11:38:28

11 Q Why is a German court asking the European Court 11:38:28

12 of Justices what to do about standard essential patents? 11:38:31

13 A Because this is a matter of European law, and 11:38:34

14 if a German court applies European law, such as European 11:38:43

15 antitrust law, it is obliged to -- to do this in 11:38:47

16 accordance with European law, and so if a German court 11:38:54

17 does -- has doubts as to how to interpret European 11:38:58

18 antitrust law, it can -- or the highest instance is 11:39:03

19 obliged to ask for a preliminary judgment of the 11:39:09

20 European Court of Justice, so the European Court of 11:39:12

21 Justices can give guidance as to how to interpret a -- a 11:39:19

22 provision of European law. 11:39:23

23 Q Let's take a look at Question 1. So at the -- 11:39:25

24 it's on the first page, and what the court asks is, "Is 11:39:29

25 the holder of a standard-essential patent who has 11:39:32

1 declared to a standardization organization his 11:39:34
2 willingness to grant a license to any third party under 11:39:37
3 fair, reasonable, and non-discriminatory terms abusing 11:39:40
4 his dominant position if he brings an injunction claim 11:39:42
5 in court against a patent infringer even though the 11:39:45
6 patent infringer has declared his willingness to 11:39:48
7 negotiate such a license," then there's an "or," and the 11:39:51
8 second part is, "is an abuse of the dominant position to 11:39:55
9 be assumed only if the patent infringer has presented 11:39:58
10 the holder of the standard-essential patent an 11:40:02
11 acceptable unconditional offer to enter into a license 11:40:04
12 agreement, which the patent holder may not refuse 11:40:08
13 without unfairly impeding the patent infringer or 11:40:10
14 violating the ban on discrimination, and the patent 11:40:12
15 infringer is satisfying his contractual obligations in 11:40:15
16 anticipation of the license to be granted for prior 11:40:18
17 use?" 11:40:21

18 Did you see that? 11:40:21

19 A Yes. 11:40:22

20 Q Is it correct that what the Dusseldorf court is 11:40:22
21 asking is whether the proper analysis is that set forth 11:40:29
22 by the European Commission which involves a willing 11:40:33
23 licensee, or is the Orange Book process satisfactory? 11:40:37
24 Is that what this question is asking? 11:40:41

25 A Basically, yes. However, if you read the 11:40:42

MAXIMILIAN HAEDICKE - 6/14/2013

Page 99

1 context and the entire judgment, the entire judgment 11:40:46
2 here, there's a clear bias of the Dusseldorf court in 11:40:52
3 order -- in favor of the Orange Book proceeding, and 11:40:58
4 this questions are -- are asked in order to pose -- to 11:41:02
5 show the contrast between the approach of the Euro 11:41:09
6 Commission of its press release of -- of December 21st 11:41:13
7 and the -- the Orange Book proceeding, so it shows 11:41:19
8 differences, and further on in the text, criticizes some 11:41:22
9 of the approaches of the European Commission. So the 11:41:28
10 term "willingness to negotiate" comes from this state 11:41:32
11 press release. 11:41:38

12 Q Would it be accurate to say the Dusseldorf 11:41:38
13 court is uncertain whether the Orange Book procedure 11:41:41
14 satisfies the European antitrust law? 11:41:44

15 MS. BERRY: Objection; form. 11:41:46

16 THE WITNESS: I'm not a member of the 11:41:47
17 Dusseldorf lower court, so I cannot say that, but I 11:41:50
18 don't understand it this way. I understand the judgment 11:41:52
19 in such a way that it wants to get -- it wants to defend 11:41:55
20 the Orange Book procedure towards the -- this very 11:41:59
21 lenient approach of the European Commission. 11:42:06

22 BY MR. LOVE: 11:42:10

23 Q The European Court of Justice could respond to 11:42:11
24 this question by saying that the Commission is right and 11:42:14
25 the Dusseldorf court is wrong; right? 11:42:16

MAXIMILIAN HAEDICKE - 6/14/2013

Page 100

1	A	Yes.	11:42:21
2	Q	Okay.	11:42:27
3		(Exhibit 7 was marked for identification by the	11:42:27
4		Court Reporter.)	11:42:27
5	MR. LOVE:	I'm going to hand you what's been	11:42:28
6		marked as Exhibit 7. Exhibit 7 is a document bearing	11:42:29
7		the Bates stamp MS-MOTO_1823_00002271028.	11:42:36
8	Q	Have you read this document before?	11:42:45
9	A	No.	11:42:48
10	Q	How did you familiarize yourself with the	11:42:49
11		history of the General Instrument versus Microsoft cases	11:42:51
12		in Mannheim?	11:42:53
13	A	Some -- can you repeat the question.	11:42:55
14	Q	Sure.	11:42:58
15		How did you -- in preparing to file your expert	11:42:58
16		report, how did you familiarize yourself with the	11:43:02
17		proceedings in Mannheim between General Instrument and	11:43:05
18		Microsoft?	11:43:08
19	A	Well, the -- the decision is in public -- is	11:43:09
20		publicly available, and the documents which I -- which I	11:43:14
21		mention in my expert report have been produced to me.	11:43:18
22	Q	But you haven't seen this document, the	11:43:22
23		Declaration of Professor David J. Teece?	11:43:24
24	A	No. No.	11:43:27
25	Q	You can put that aside.	11:43:27

MAXIMILIAN HAEDICKE - 6/14/2013

Page 105

1	not to answer.	11:47:38
2	BY MR. LOVE:	11:47:39
3	Q Will you follow your counsel's advice?	11:47:40
4	A Yes.	11:47:41
5	Q The European Commission's preliminary view is	11:47:41
6	that enforcing injunctions on standard essential patents	11:47:46
7	against a willing licensee is an abuse of antitrust law;	11:47:49
8	is that correct?	11:47:54
9	MS. BERRY: Objection; form.	11:47:54
10	THE WITNESS: Please repeat.	11:47:54
11	MR. LOVE: Sure.	11:47:56
12	Q The European Commission's preliminary view is	11:47:56
13	that enforcing injunctions on standard essential patents	11:48:00
14	against a willing licensee is an abuse of antitrust law;	11:48:02
15	correct?	11:48:06
16	A These are the wordings used, yes.	11:48:06
17	Q Would you agree that Judge Robart in the	11:48:08
18	Ninth Circuit helped Motorola avoid exposing itself to	11:48:11
19	additional antitrust liability?	11:48:16
20	MS. BERRY: Objection to form, outside the	11:48:17
21	scope of his expert report.	11:48:19
22	THE WITNESS: I have no sufficient information.	11:48:20
23	I have no opinion as it relates to the U.S. trial.	11:48:22
24	BY MR. LOVE:	11:48:24
25	Q Do you understand that the decision to relocate	11:48:25

MAXIMILIAN HAEDICKE - 6/14/2013

Page 106

1 Microsoft's distribution center in Germany required 11:48:28

2 considerable preparation beginning in January of 2012? 11:48:32

3 MS. BERRY: Objection; form, outside the scope 11:48:36

4 of his expert report. 11:48:37

5 THE WITNESS: I have no opinion on that. 11:48:39

6 BY MR. LOVE: 11:48:40

7 Q Are you aware of any of the details surrounding 11:48:40

8 Microsoft's decision to relocate its German facility? 11:48:42

9 A No. 11:48:46

10 Q Did you review any documents associated with 11:48:46

11 the move? 11:48:48

12 A No. 11:48:49

13 Q Did you review the deposition transcripts of 11:48:49

14 the Microsoft employees who described that process? 11:48:51

15 A No. 11:48:54

16 Q Were you aware that Microsoft made its decision 11:48:54

17 and had begun implementing the relocation out of Germany 11:48:59

18 in March of 2012? 11:49:03

19 A No. 11:49:04

20 Q If Motorola had enforced the injunction in 11:49:05

21 Mannheim, could Microsoft have continued to distribute 11:49:10

22 H.264-compliant products in Germany? 11:49:14

23 A If they fall under the patent and if there has 11:49:17

24 been an injunction, no. 11:49:22

25 Q If Motorola had enforced its injunction in 11:49:23

- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

MAXIMILIAN HAEDICKE - 6/14/2013

Page 122

1 CERTIFICATE OF REPORTER

2 I, RACHEL FERRIER, a Certified Shorthand
3 Reporter, hereby certify that the witness in the
4 foregoing deposition was by me duly sworn to tell the
5 truth, the whole truth, and nothing but the truth in the
6 within-entitled cause;

7 That said deposition was taken down in
8 shorthand by me, a disinterested person, at the time and
9 place therein stated, and that the testimony was
10 thereafter reduced to typewriting by computer under my
11 direction and supervision and is a true record of the
12 testimony given by the witness;

13 That before completion of the deposition,
14 review of the transcript [X] was [] was not requested.
15 If requested, any changes made by the deponent (and
16 provided to the reporter) during the period allowed are
17 appended hereto.

18 I further certify that I am not of counsel or
19 attorney for either or any of the parties to the said
20 deposition, nor in any way interested in the event of
21 this cause, and that I am not related to any of the
22 parties thereto.

23 DATED:

24

25 RACHEL FERRIER, CSR No. 6948